



5. *Child Custody*

What is child custody?

Child Custody is the legal right to keep, control, guard, and care for a minor child and includes the terms “legal custody” and “physical custody.”

Pennsylvania law defines a minor child as any unemancipated person less than 18 years of age.

What is the difference between legal and physical custody?

When you file a custody action, the courts will generally determine both legal custody and physical custody.

Legal Custody is the right to make major decisions affecting the best interests of a minor child, including but not limited to: medical, dental, religious and educational decisions.

Physical Custody is defined as having actual physical possession and control of a child. In other words, who is the child living with or staying with at any given time?

BEST INTERESTS OF THE CHILD

Courts use a legal standard called the “best interests of the child” when making decisions about legal and physical custody. The factors a court can look at to determine the “best interests of the child” include, but are not limited to:

- 1) The child’s physical, intellectual, moral and spiritual well-being.
- 2) Which parent has been the primary caretaker, and which parent is best able to provide a loving, stable environment for the child.
- 3) Whether there has been a history of violence or abusive conduct.
- 4) The child’s preference. However, the amount of weight given to the child’s preference depends on the child’s age and maturity.
- 5) Which parent will most likely encourage frequent and continuing contact between the child and the other parent.
- 6) The parent’s ability to provide stability in the child’s life and meet the child’s basic needs.
- 7) A party’s income is generally not a factor as long as the parent with the lower income can provide stability and meet the child’s basic needs.

Are there different types of physical custody arrangements that a court can order?

When deciding your case, there are many different custody arrangements that the court can determine are best for your child. A party in a custody case can be granted the following:

Primary Physical Custody: when the minor child lives in your residence for the majority of time and you are the primary caretaker of the minor child.

Shared Physical Custody: when the minor child lives with you and the other party on a substantially equal basis.

Partial Physical Custody: when one parent has the right to take the minor child away from the custodial parent for a certain period of time. This could be anywhere from a few hours to overnights.

Visitation: the right to visit a child. Visitation does not include the right to remove the minor child from the primary custodian's care. Visitation is the right to see and spend time with a child, but only under approved direct supervision.

Sole Physical Custody: this type of arrangement is only ordered in certain limited situations. This arrangement is ordered when the other party is incarcerated or otherwise unable or unwilling to parent.

Other important custody terms

Custodial Parent: the parent with whom the child lives the majority of the time.

Non-Custodial Parent: the parent who has either partial physical custody or visitation with the minor child.

Pro Se: when a party represents themselves, without the assistance of a licensed attorney. It may involve filing papers or appearing at a conference or hearing on your own.

Petition: a written request presented to the court asking the court to take some specific action on a case. If you file a petition, you will sometimes be called the "Petitioner." The other party may be referred to as "Respondent."

Mediation: the process by which a neutral mediator (either a lay person or lawyer) assists the parties in attempting to reach a mutually acceptable agreement on issues arising in a custody action. Any agreement reached in mediation must be based upon the voluntary decisions of the parties. The mediator does not make the decisions.

Court Order: a legal document signed by a judge requiring a person to do something or requiring a person not to do something. A court order is THE LAW.

Contempt of Court: an intentional failure to obey a court order.

Modification: a change to a court order. Court orders may be changed after a hearing or by agreement of the parties, but must always have a judge's signature. Custody orders may always be subject to change if it is in the child's best interest to do so.

Emancipation: independent status granted to a child under the age of 18 who is married or has otherwise been determined by the court to be independent of his or her parents.

Guardian Ad Litem: a person, usually but not always an attorney, who represents your child's interests in the custody case. Guardians (often called GALs) often check into the issues raised by the parents and make a recommendation to the court about custody. You should always be polite and honest with the GAL because the court will place great value on their recommendation about custody and you want them to view you favorably.

Who can file for custody?

Most of the time custody actions involve two parents. But, custody actions may also be brought by grandparents, nonrelatives or the state.

- 1) Parents vs. Parents:** In cases where one parent files against another, parents generally begin a custody case on equal footing. Each parent will have to prove what is best for the child.
- 2) Parents vs. Grandparents:** Under Pennsylvania law, grandparents may file for visitation or custody of a child. The Grandparent's Visitation Act allows grandparents to be awarded reasonable visitation or partial custody if it is in the child's best interests and does not interfere with the parent-child relationship.

Grandparents are also filing for primary custody in more and more cases. Grandparents may do so if they make allegations of parental abuse or neglect or they been the primary caretakers of the child for an extended period of time.

Note: Grandparent visitation is an important and complicated issue. You should speak with an attorney. You can call NPLS at 1-877-953-4250 to see what services are available in your county or contact your local bar association's lawyer referral program.

- 3) Parents vs. Third parties:** Third parties can file for custody, partial custody, or visitation of a child. A third party may have custody rights when they have acted like a parent or stood "in loco parentis" (like a parent).
- 4) Parents vs. the State:** The state may obtain custody of a child in three ways:
 1. By consent of the parent or guardian – not to exceed 30 days. If the county agency wishes to extend custody beyond 30 days, they must file a dependency action;

2. Through a dependency action – when the county agency, usually the child protective services department, is able to prove that the child is currently without proper parental care or control and the care and control needed is not immediately available; or
3. A delinquency adjudication – a criminal act by the child.

When should I file for custody?

Sometimes parents can work out their differences. However, there are often situations that can only be resolved by the courts. You should consider filing a petition if:

1. You are being denied all contact with your child;
2. You or your children are survivors of domestic violence or any other form of abuse or neglect;
3. The other parent is threatening to take your child and not give him or her back;
4. The other parent is planning to move out of the county, state, or country with the child and you do not want the child to move.

For additional information on when to file for custody, please review the frequently asked questions (FAQs) at the end of the child custody section.

Are there situations where I may not want to file for custody?

You may not want to file for custody if:

1. Your child is living with you, you have been able to work out time sharing arrangements with the other parent, and they are not likely to take and keep your child.
2. You are satisfied with your current custody arrangement. If you file you may be “opening the door” for the other parent. For example, if one parent has not seen the child for a long time and you file for custody, the court will likely grant partial custody or visitation rights to the other parent.

3. You already have a Protection from Abuse Order that has a provision for custody that you are satisfied with. REMEMBER, the custody provision in your PFA expires at the same time your PFA expires.

For additional information on when to file for custody, please review the frequently asked questions (FAQs) at the end of the child custody section.

In what county do I file for custody of my child?

Child custody cases are filed in the county where the minor child has been living for a period of six (6) months, or since the child's birth if the child is less than six (6) months old.

If you are the custodial parent and you and the child have not been residing in your current county for six (6) months, you may need to file in the county where you previously lived.

Where do I need to go to file for custody?

Different counties have different child custody procedures. You should start by going to or calling the family court administrator's office, the civil clerk of court or the Prothonotary's office.

Please review the child custody insert in this handbook for specific information on where to file in your county.

Is there a fee for filing for custody?

Yes. The filing fee may range from \$135 - \$170 dollars, depending on where you are filing.

However, if you are low-income, you may request a waiver of the fees by completing what is called an In Forma Pauperis (IFP) petition. If a judge grants your request, the IFP Order allows a low-income party to file their child custody paperwork for free. You will need to provide the Court with information concerning your monthly income and expenses in your petition.

Please review the child custody insert in this handbook for specific information on how to file an IFP petition.

What information do I need to file? What do I need to say in my custody paperwork?

You are the Plaintiff and the other parent, third party or grandparent is the Defendant(s). This is the information you will need for your custody paperwork:

- 1) Your name and address;
- 2) The name and addresses of all the defendant(s);

REMEMBER, even if your child is living with a grandparent and the other parent is not involved, you must also list him or her as a party to the case, as a defendant.

- 3) The name and birth date of the child, and with whom the child is currently living;
- 4) What relationship you have to the child: whether it be parent, grandparent etc.;
- 5) Whether you were married when the child was born. If you were married, state to whom you were married;
- 6) Every address at which the child has lived over the past five (5) years and with whom the child lived at each address;
- 7) Everyone currently living with you;
- 8) What relationship each defendant has to the child;
- 9) Everyone, to the best of your knowledge, currently living with the defendant(s);
- 10) If you have a custody order from the same county, a different county or a different state, you will need to write down the county and case number and attach a copy of the order to your custody paperwork.
- 11) Whether or not you or the children have been abused or neglected as evidenced by a protection from abuse order or letter from children and youth;
- 12) List every person on your custody paperwork that you believe has or may have rights to the child.

An example of a person who may have rights to the child is a grandparent or third party, if the child lived with them and they acted like the child's parent for a significant period of time.

13) Finally, you will need to tell the court what custody plan you are suggesting for the child and why that plan is in the child's best interests. For example, if you want the court to order that you have primary physical custody, you must give some reasons why it is in the child's best interests.

Depending on your county, NPLS may be able to assist you in your preparation of the necessary paperwork for your case. You can call NPLS at 1-877-953-4250 to see what services are available in your county. If no services are available, you can go to PALawHELP.org select the "Children & Families" section, and then choose "Child Custody and Guardianship."

How is the Defendant notified that I filed for custody?

After you file your custody paperwork, you are required to serve the other party or parties. You will usually serve the other party by mail. You must send the custody paperwork by certified mail, return receipt requested. In some counties, you should also send the custody paperwork by first class mail. You must keep the green certified mailing card to prove you mailed the custody paperwork by certified mail.

Although you may be able to obtain a waiver of the filing fees, you are responsible for the costs of serving the paperwork. Some counties prefer you send one copy by certified mail, return receipt requested, which is an extra fee. Postage costs range from approximately \$5-\$11 for mailing. Again, refer to the insert for information about your county's procedures.

You should serve the Defendant immediately after filing your papers. If you fail to serve the Defendant, your hearing may be continued or dismissed.

What happens after I file my custody paperwork? What is the difference between mediation and a custody conference?

In most counties, you and the Defendant will attend a custody conference or mediation, or both, prior to going before a judge.

Mediation

In some counties, you and the Defendant will be directed to appear before a trained mediator. A mediator is either a lay person or an attorney, who works with the parties to reach an agreement.

If you and the other party reach an agreement, the mediator will write down the agreement. A judge will sign your agreement, making it an official child custody order. If the parties are unable to come to an agreement, your case will be scheduled for a child custody conference.

If you are a victim of domestic violence, your county should allow you to skip mediation due to the history of domestic violence between you and the Defendant. You are not required to have a current PFA. You must certify that you have been a survivor of domestic violence recently, within the last 24 months.

Custody Conference

In other counties, you and the Defendant will be directed to appear at a child custody conference.

You will appear before a child custody hearing officer. The hearing officer is an attorney or judge. The hearing officer or judge will try to assist the parties in coming to a satisfactory custody arrangement for the child. Both parties may be represented by attorneys.

If you and the other party can come to an agreement, the hearing officer will write down the agreement and forward it to the court for approval and entry as an order.

If you and the Defendant are unable to come to an agreement, the hearing officer will ask you or your attorney questions and prepare a report. The hearing officer may recommend a temporary order which may be entered by the court until the matter can be heard by a judge.

The custody conference and mediation process may differ from county to county, so please review the insert for specific information on your county.

What is the Kids First Program or Co-Parenting Class?

Every plaintiff and defendant **IS REQUIRED** to attend a parenting class. In some counties, if you fail to take the required parenting class, the court could dismiss your petition, hold you in contempt of court or deny periods of custody, partial custody, or visitation until you complete the required class.

The parenting class is different from county to county so please review the insert for specific information on your county's co-parenting class.

Do I need an attorney to represent me in my child custody case?

Parties can represent themselves in child custody cases. Unfortunately, due to limited resources, North Penn Legal Services can only provide representation in a limited number of child custody cases. Your local office may be able to provide limited advice concerning your case. Please call 1-877-953-4250 to see what services may be available in your county.

If you would like a private attorney to represent you, you can contact your local bar association's lawyer referral service.

How can I prepare for my child custody conference?

If you and the other parent have worked out an agreement, you can tell the child custody hearing officer. The hearing officer will take your agreement and make it into a custody order.

If you believe that you and the other parent will not be able to work out an agreement, you should be prepared to answer the following questions about yourself and the minor child:

- 1) Where are you living? Where is the child living? (if not with you) Do you rent or own? Who else is living with you? How many bedrooms do you have? Where is the minor child sleeping?
- 2) Information about the child's schooling or any special medical concerns about the child.
- 3) Your work schedule and child care arrangements.
- 4) If you don't work, information on how you are supporting the minor child.
- 5) If you are living with a boyfriend or girlfriend, are they employed? Where?
- 6) What custody arrangements you are looking for: primary physical custody, partial physical custody, or visitation?
- 7) What custody arrangements you are asking that the Defendant have: primary physical custody, partial physical custody, or visitation?
- 8) Any concerns about the Defendant's fitness and ability to care for the children.

In some counties, the child custody hearing officer may also hear from, or review the following:

The minor child. If the child is over a certain age, the hearing officer may interview the child concerning their wishes about contact with either party.

Counseling reports/therapist. A hearing officer may review reports from or speak with the child's counselor if there are allegations that contact with one party may be harmful to the child.

Children and Youth. A hearing officer may review reports from or speak with a local children and youth caseworker about issues that may be relevant to the custody case.

What are the possible outcomes of the child custody conference?

If the parties agree:

If the parties are able to reach an agreement at the custody conference, an order of court may be dictated or signed. The order of court will state each parent's custodial rights.

What if I disagree with the recommendation of the hearing officer or am unable to agree with the other party?

If both parties are seeking primary physical custody of the minor child, then your case will be scheduled for a full hearing before a judge. In some counties, the court will enter a temporary order until the case is heard by a judge.

If you disagree with the recommendation of a temporary or final order, you will have a right to request a hearing before a judge.

The procedure to request a hearing before a judge may differ greatly from county to county, so please review the insert for specific information on your county.

CUSTODY TRIAL: What type of evidence will I need?

The court looks at many factors that affect a child's physical, intellectual, moral and spiritual well-being, including, but not limited to:

- 1) **The custody arrangement of siblings.** Generally, courts prefer that brothers and sisters are raised together in one household.
- 2) **Who has been the primary caretaker of the child?** The court will look at who has been the person who has been the primary caretaker in the past and who has been meeting the child's day-to-day needs.
- 3) **The parents' new relationships.** If you, and/or the Defendant are dating others, are there any concerns about him or her? Are there issues of domestic violence, criminal record, or drug or alcohol abuse? How does he or she other get along with the child?
- 4) **The parties' work schedules.** The court will consider the work schedules and the amount of time the parties have available to care for the child.
- 5) **Stability of the parties.** The court will consider the benefit of stability in a child's life, which includes the parties' ability to maintain a home, including no change in school districts, and to provide a stable lifestyle.
- 6) **The parties' finances.** A common myth is that the person with more money will win the custody case. This is typically not true. The court will look at each party's ability to provide financial stability in the child's life by providing an adequate home and living environment for the child. The court can be concerned if, because of your low-income status, you are frequently evicted because you are unable to pay your rent.
- 7) **The accommodating parent.** The court will consider which parent will most likely allow and encourage the child to have frequent and continuing contact with the other parent.
- 8) **A party's past conduct.** Courts like to focus on present circumstances when making custody decisions. A party's past conduct will not be considered UNLESS it has a harmful current or future effect on a child.
- 9) **Abusive conduct.** The judge must consider each parent and adult household member's present or past violent or abusive conduct – regardless of the existence of a PFA.
- 10) The judge must consider whether a parent has been convicted of certain crimes, including kidnapping, incest and sexual abuse of the children.

REMEMBER: The court will NOT consider if a parent is paying child support before making a determination concerning custody.

What if I lose after a custody trial, can I appeal on my own?

If you are unhappy with the judge's decision after a full custody trial, you have the right to file a motion to reconsider (or for reconsideration) or an appeal to the Superior Court of Pennsylvania. You should immediately contact an attorney if you wish to consider these options, **as specific timelines do apply and are strictly adhered to!**

Appeals to the Superior Court are very complicated and expensive. It is possible, but difficult, for a person to proceed in the appeal without an attorney due to the complexity of the legal documents that need to be filed, the filing deadlines and other requirements and fees.

If you are unhappy with an order, you should consult with an attorney to see whether or not you have any basis for an appeal and an opinion about the likelihood an appeal would be successful or the best option in your case.

Can my custody order be changed?

Child custody orders may be modified at any point in time until the child turns 18 years old. However, a court is most likely to consider a modification petition when there has been a substantial change in the circumstances of the parties.

The court will again use the "best interests of the child" standard to decide whether the requested modification should be granted. In filing a modification petition, you will generally go through the same procedures as in filing an initial complaint.

What if the Defendant fails to follow the order?

Each party is required to comply with the custody order. A parent who breaks a court order also breaks the law. In other words, if one parent willfully disobeys or fails to comply with an existing custody order, the other parent may file paperwork asking the court to punish that parent. The paperwork is called a **Petition for Contempt**.

Under Pennsylvania law, if the judge decides that the custody order has been willfully and intentionally broken, the parent who broke the court order may be put in jail for up to six (6) months and/or fined up to \$1,000 for each violation.

HOWEVER, in child custody cases, this rarely, if ever occurs. Sometimes, the party found in contempt may be ordered to pay any attorney's fees incurred by the other parent or any expenses incurred by the other parent, such as travel expenses or lost wages because they had to go forward with a contempt petition.

It is more likely in child custody cases that a judge may order other relief as deemed necessary to make up for the disobeying party's behavior. For example, the judge may order make-up time if one parent withheld the child for their visitation with the other parent or modify exchange times if the parent constantly brings the child home late. But you cannot rely on this outcome, and should never break the court order.

The child custody insert may have additional information on the types of outcomes judges tend to order in your county when a person is found in contempt of violating a child custody order.

What if the Defendant refuses to return the child after a visit and/or leaves the state with the child?

People do not always act in the best interests of the child because child custody cases are very emotional. One parent may keep the child from the other parent without that parent's consent. In these types of situations, you will need a judge to immediately review your custody case. Pennsylvania gives parents an opportunity to bring their emergency immediately before a judge by filing a **Petition for Special Relief**. In some counties, you may be able to see a judge the same day. In other counties you may need to wait up to 5 days.

Pennsylvania law gives judges broad powers when an emergency occurs. After a party files a petition for special relief, a judge may direct a parent not to leave the state or county with the child. A judge can direct a party to return the child to the other parent. A judge may award temporary physical custody, partial physical custody or visitation to one parent on a temporary basis. A judge may do anything else he or she feels would be in the best interests of the child.

The child custody insert may have additional information about the procedure that may be helpful for your county.

The child lives with me and I want to move out of Pennsylvania or my county but the other party won't agree. Can I move anyway?

A common problem occurs when the parent with whom the child lives wants to move with the child out of their county or out of the state and the other parent does not want them to. You will need to file what is called a Petition for Relocation. A hearing will be scheduled in front of a judge to determine whether or not the move is in the best interests of the child.

A judge will determine whether or not the requested move is in the "best interests of the child" by using a three-part test. The judge will look at three issues:

1) Will the move significantly improve the quality of life for the parent AND the child?

If you want to move to Florida simply because the weather is warm, then your request to move will likely be denied. However, if you want to move because you are getting a promotion at work and are transferred out of the county or state, then this could significantly improve the child's quality of life if you are receiving additional income, then your request may be granted.

2) What are your reasons for the move? What are the reasons the non-custodial parent is objecting to the move?

If you want to move to make it harder for the other parent to visit, then your request to move will likely be denied. On the other hand, if the other parent rarely visits the child but objects to the move for no good reason, then the court may allow you to move.

3) Are there realistic substitute visitation arrangements that can be made for the other parent if the court allows the requested move?

If the other party is seeing the child on a frequent basis, but you want to move to California, is there a meaningful substitute partial custody plan that is roughly equal to what the other parent is receiving now? Realistically, the non-custodial parent will only see the child during summer vacation and some holidays due to the distance and travel expenses. The court will weigh, given the other two issues, whether it is fair to make the other parent give up his consistent contact with the minor child.

Note: It is **VERY IMPORTANT** for you to consult with an attorney prior to moving to a new county or out of the state. In some cases, if you move without consent of the other party or court permission, you could lose primary custody of the child and/or could face criminal charges for custodial interference.

REMEMBER, child custody cases are very fact specific and can be very complicated. This handbook is intended only as a guideline and informational packet to help you understand the court system in regard to custody cases. If your case is complicated, you should consider consulting with an attorney.

Frequently Asked Questions

Isn't it true that I need to be the first one to file for custody?

OR

Does whoever files for custody first get what they are asking for?

- You DO NOT need to be the first parent to file for custody.
- Custody cases are decided by a rule called the "best interests of the child."
- The parent who files first DOES NOT get an advantage.
- It may be better **NOT** to file for custody. The custody process may give an otherwise uninvolved parent an opportunity to get back into the child's life.

Are child custody and child support linked? In other words, if the other parent is not paying child support do I still need to let them see the child?

- Child Support and Child Custody **ARE NOT** linked.
- You may be found in **contempt** of a Court Order if you withhold visits from the other parent because they have not been paying support.
- You **must also** pay child support even if you are not seeing your child.

The other parent cannot take my child around their new boyfriend or girlfriend right?

- The court will not ban your child from visiting the other parent's boyfriend or girlfriend **unless** you can prove the girlfriend or boyfriend is dangerous, is likely to be a bad influence on the child, or that it is not in the child's best interests.
- The court trusts that neither parent would expose their child to mean and dangerous people.

Will the court give the other parent visitation rights even if they have not paid child support and have not seen the child for a long time?

- Yes. A parent can see their child even if they fail to make child support payments.
- The law assumes that it is in the child's best interest to have a relationship with both parents.
- The court may give him or her visitation unless you can show that having contact with the other parent is not in the child's best interest.
- The visitation may be supervised by an agency or third party if there is any question that a visit without supervision may harm the child in some way.
- You may want to go back to court and request that the other's parent's visitation with your child be reduced if the other parent does not make use of their court-ordered visitation.

Doesn't the court always keep children with their mother?

- The court **will not** automatically give mothers custody of their children.
- The court will decide who gets custody based on the best interests of the child.

Can the other parent go to the child's school or day care and pick them up if we do not have a Court Order?

- Yes. Without a court order, either parent can usually go to the child's school or daycare and pick them up without questions.
- Each school and day care will likely have its own policy on to whom the child may be released.
- You should ask your child's school or day care provider what their policy is so you know what to expect and can take precautions if they are needed.

Will the court help me force the other parent to visit their child?

- No. Even if you get a court order granting partial physical custody or visitation to the other parent, the court **will not** force him or her to visit your child.
- The court **does not** have the ability to make someone be a good parent if they do not want to be one.

Will the police help me get the child back from the other parent if we do not have a Court Order and the other parent refuses to return the child to me?

- The police **cannot** force the other parent to return your child to you because there is no order of court and you are both the parents.
- The police may talk with both of you to reach a short-term agreement.
- You should **immediately** file for child custody to obtain a court order that will make very clear who can have the child on which days and at which times.

Do all child custody lawyers charge the same fee to represent clients?

- NO. Some private child custody lawyers may ask you to pay a retainer. A retainer is when you pay money up front for a lawyer's services.
- Some child custody lawyers may not ask you to pay a retainer and may be willing to take reduced payments based on your income.
- If you feel you will be hiring a private lawyer, you should talk to a few different lawyers before choosing one. Many lawyers will do the first interview for free or for a reduced fee of \$25 - \$50. You should ask whether or not there will be a charge for the initial visit when you call.

Is there an easier way to prepare my child custody paperwork?

- Go to www.PALawHELP.org , then select the "Children & Families" section, and then choose "Child Custody and Guardianship."
- Or, go to your local county website for information.

Can the Court force me to take a drug test, get a drug & alcohol evaluation, get a psychological evaluation, have my house inspected, or do anything else that feels like a violation of my rights?

- Yes. The court may require you to do any of the things mentioned above, and maybe even more like co-parenting, anger management classes or meet with a court-appointed attorney for the child called a Guardian Ad Litem.
- You MAY refuse to do these things. But, the court **CAN** force you to do these things or face consequences like limiting your contact with the child or holding you in contempt. The court will do what it feels will be in the best interest of your child.

What is Contempt?

- A parent who **intentionally** and **willfully** breaks a court order breaks the law.
- A hearing will be scheduled in front of a judge if a petition for contempt is filed. If a judge decides you have willfully and intentionally not followed the court order, you may be put in jail for up to six (6) months and/or fined up to \$1,000 for each violation.